

Briefing Notes: Proposed Changes to the Furnished Holiday Lettings Rules

An Introduction to the Briefing Note

The government has recently published revised proposals for new rules on the taxation of furnished holiday lettings (FHLs). According to the government's own figures, approximately 25% of existing FHL businesses will cease to qualify under the proposed new rules. We have summarised the government's proposals below. This briefing note should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

Briefing Note January 2011

Summary:

An introduction to changes in the tax treatment of furnished holiday lettings.

For advice on all commercial property matters please contact:

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What are the existing rules for FHLs?

In general, leasing of real estate is taxed under the rules for property businesses. However, there are specific rules for FHLs, which allow an FHL business to be treated as a trade for certain purposes if it meets a number of conditions. Trading treatment is more beneficial than property business treatment.

Summary of the government's revised proposals

Extension of the FHL regime

The government will extend the FHL regime on a permanent basis to cover FHLs situated anywhere in the European Economic Area (EEA).

Deferred increase in commercial lettings thresholds

The government will extend the minimum periods for which an FHL must be:

- **Available for letting** to the public each year (the availability threshold) from 140 days (20 weeks) to **210 days (30 weeks)**.
- **Actually let** to the public each year (the occupancy threshold) from 70 days (10 weeks) to **105 days (15 weeks)**.

The changes will take effect from **April 2012**, which means:

- For individuals and partnerships, the new thresholds will apply from the start of the 2012-13 tax year; and
- For companies, for accounting periods beginning on or after 1 April 2012.

Increasing these thresholds is intended to ensure only people running FHLs as a commercial business benefit from the favourable tax treatment offered by the FHL regime.

Occupancy threshold: period of grace

- If your FHL business meets the new 15-week occupancy threshold in one year, it can elect to be **treated** as having met the occupancy threshold in each of the following two years, even if your business does not in fact meet the threshold in those years.
- This grace period is designed to address concerns that the increased occupancy threshold will result in a significant number of businesses qualifying for FHL treatment in some years (but not in others) which would create particular problems when operating the capital allowances rules.
- Guidance on the operation of these provisions will be published by the government before the April 2012 implementation date.

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Occupancy threshold: existing averaging provisions remain in place

- The existing averaging provisions will be retained. Subject to a valid election, the current system permits all properties within a business to qualify for FHL treatment where, on average, they meet the occupancy threshold for a particular year.
- Separate averaging calculations and elections will have to be made for properties in the UK and elsewhere in the EEA. Where a person operates both UK and EEA FHL businesses, it will not be possible to apply the averaging provisions across all properties. At least two separate calculations and two separate elections will have to be made.

Restriction of loss relief

The government will restrict loss relief so that losses from a UK or EEA FHL business can only be set against income from the same business. The restrictions will apply for:

- Individuals and partnerships from **6 April 2011**.
- Company accounting periods beginning on or after **1 April 2011**.

No change to capital allowances rules

The government will not go ahead with its proposal to maintain separate capital allowances pools for expenditure incurred on a property qualifying only intermittently under the FHL rules. The existing capital allowances rules will continue to apply.

Implications of the proposals for businesses

- The increased commercial lettings thresholds (and particularly the new 15-week occupancy threshold) are likely to have the greatest impact on:
 - new start-ups; or
 - existing businesses, which are either not being run on a truly commercial basis or whose properties are located in areas with a short commercial letting season.
- Businesses continuing to qualify under the new FHL rules are likely to have to pay more tax relative to their 2010-11 position. This will mainly be because they will no longer be able to offset any losses against non-FHL income.
- The new period of grace provisions should help your business if it qualifies intermittently under the increased occupancy threshold, particularly in relation to the cost and administrative burden of operating the capital allowances rules.

If you would like to know more about this topic or our other legal services, please contact:

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